

SENATE NO. 1210

AN ACT TO PROVIDE FOR THE LICENSING AND REGULATION OF LACTATION CONSULTANTS.

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. AN ACT TO PROVIDE FOR THE LICENSING AND REGULATION OF
2 LACTATION CONSULTANTS.

3 Short Title.

4 This Act shall be known and may be cited as the Lactation Consultant Practice Act

5 SECTION 2. Chapter 13 of the General Laws, as appearing in the Official Edition, shall be amended
6 by inserting at the end thereof, the following sections:-

7 Section 98. Board creation.

8 (1) There is hereby created a board of lactation consultants within the division of professional
9 licensure which shall consist of seven persons who have been residents of the Commonwealth for at
10 least two years prior to their appointments and who are actively engaged in their areas of practice. The
11 board shall be composed of:

12 (a) Five licensed independent lactation consultants;

13 (c) Two public members who are not associated with or financially interested in the practice
14 of lactation care and services.

(2) Board members shall serve for a term of three years and until their successors are appointed and qualified, except that the initial appointments shall be as follows:—

(a) Initial appointees shall be certified as independent lactation consultants by the International Board Certified Lactation Consultants.

(b) Two independent lactation consultants and one public member shall be appointed to serve for three years;

(c) Two independent lactation consultants and one public member shall be appointed to serve for two years, and

(d) The remaining independent lactation consultant shall be appointed to serve for one year.

(3) Whenever a vacancy shall occur on the board by reasons other than the expiration of a term of office, a successor of like qualifications shall be appointed for the remainder of the unexpired term. No person shall be appointed to serve more than two successive three year terms. A former member shall again be eligible for appointment after a lapse of one or more years.

(4) The members of the board shall be public employees for the purposes of chapter 258 for all acts or omissions within the scope of their duties as board members.

SECTION 99. Duties and powers of the board.

(1) The board shall establish the requirements for licensure and for the standards of professional and ethical conduct; establish appropriate scopes of clinical practice for the various levels of licensure; authorize and oversee appropriate examinations to determine the qualifications of applicants; grant licenses to qualified applicants; establish standards for continuing education; renew licenses, and set and administer administrative penalties and sanctions as defined in sections 196 to 202, inclusive, of chapter 112. All said fees and administrative penalties shall be deposited in the division of professional licensure trust fund established under chapter 10, section 35 V.

38 (2) The board shall administer the provisions of sections 196 to 202, inclusive, of chapter 112 and
39 shall promulgate such rules and regulations as may be necessary to implement the same. Said board
40 shall publish ethical guidelines as a part of its regulations and shall make available to the public a list
41 of its licensees.

42 (3) The board shall promulgate such other rules and regulations necessary to implement and further
43 the purpose of this Act.

44 Section 100. Meetings.

45 Said board shall elect a chairperson annually and shall meet at the call of such chairperson or upon the
46 request of four or more members of the board. Board members shall serve without compensation but
47 shall be reimbursed for actual and reasonable expenses incurred in the performance of their duties.

48 All meetings shall be announced and conducted in accordance with applicable statutes defining public
49 meetings with the exception that remote participation is specifically authorized so long as three or
50 more board members are physically present at the public site. At the discretion of the chair, additional
51 board members, staff, or interested parties may remotely participate by any live, two-way medium
52 such as audio or video conferencing.

53 SECTION 3. Chapter 112 of the General Laws, as appearing in the Official Edition, shall be amended
54 by adding the following sections:

55 Section 196. As used in this section and sections 197 to 202, inclusive, the following words shall have
56 the meaning indicated:

57 Agency - any sole proprietorship, partnership, corporation, association, limited liability company,
58 limited liability partnership, or other business organization or entity, whether for profit, not for profit,
59 or governmental, which provides lactation care and services , either exclusively or in combination with
60 other types of goods or services.

61 Board - the Board of Registration of Lactation Consultants operating within the Division of
62 Professional Licensure.

63 Division - the Division of Professional Licensure.

64 Employee - an individual who is subject to the direction and control of an organization or unrelated
65 individual with respect to the nature of the work to be performed and the manner in which such work
66 is to be done, including but not limited to, such matters as work hours, method and amount of
67 compensation, decisions about what services will be provided, decisions about who will receive such
68 services, and other terms and conditions of employment. The question of whether an individual is or
69 is not an "employee" does not depend upon remuneration for services.

70 Independent lactation consultant (ILC) - an individual licensed by the board after demonstrating the
71 appropriate education, knowledge, and experience necessary for independent clinical practice. Board
72 standards shall be equivalent to established national standards such as those set for an International
73 Board Certified Lactation Consultant (IBCLC) by the International Board of Lactation Consultant
74 Examiners.

75 Lactation care and services - the clinical application of scientific principles and a multidisciplinary
76 body of evidence for the evaluation, problem identification, treatment, education, and consultation to
77 provide lactation care and services to childbearing families. Lactation care and services includes but is
78 not limited to: (1) lactation assessment through the systematic collection of subjective and objective
79 data, (2) analysis of data and creation of a plan of care, (3) implementation of lactation care plan with
80 demonstration and instruction to parents, and communication to primary health care provider, (4)
81 evaluation of outcomes, (5) provision of lactation education to parents and health care providers, (6)
82 recommendation and use of assistive devices.

83 Peer counselor- an employee who has received an orientation, but whose formal training does not meet
84 the board requirements for licensure as a lactation consultant.

85 Practice - rendering or offering to render any clinical lactation care and services to any individual,
86 family, or group of individuals.

87 Supervisor- For a PC, a supervisor shall be an ILC. Such supervisors will provide guidance, advice
88 and serve as a referral source.

89 Section 197. Exemptions.

90 Nothing in sections 198 to 202, inclusive, shall be construed to prevent qualified members of other
91 professions or occupations from performing functions consistent with the accepted standards of their
92 respective professions, provided, however, that they do not hold themselves out to the public by any
93 title or description stating or implying that they are lactation consultants or are licensed to practice
94 clinical lactation care and services.

95 Nothing in sections 198 to 202, inclusive, shall prevent the practice of lactation care and services by
96 students, interns, or persons preparing for practice under the qualified supervision of a licensee.

97 These sections shall not apply to employees of the United States government or any bureau, division,
98 or agency thereof while in the discharge of the employee's official duties so long as said employees
99 are performing their duties within the recognized confines of a federal installation regardless of
100 whether jurisdiction is sole federal or concurrent.

101 For the purposes of these sections, lactation care and services provided through the federal Women,
102 Infants and Childrens (WIC) program shall be considered exempt.

103 Section 198. License Required

104 (1) Individuals shall not practice clinical lactation care and services or hold themselves out as
105 lactation practitioners unless licensed under this Act.

106 (2) All persons engaged in the practice of lactation care and services on the date of enactment of this
107 Act (existing practitioners), may continue to practice until 12 months following promulgation of
108 regulations by the board, or the denial of an application by the board, or the withdrawal of an
109 application, whichever occurs first.

110 (3) At the discretion of the board, persons not meeting education, training, or experience
111 qualifications for any clinical license described in this Act may be considered to have met
112 qualifications providing that they can document three years of experience acceptable to the board.

113 Section 199. Standards for Licensure.

114 (1) The board, subject to a vote of the majority of its members, is authorized to deny a license on the
115 following grounds:

- 116 (a) Conviction by a court of competent jurisdiction of a crime which the board determines to
117 be of such a nature as to render such person unfit to practice;
- 118 (b) Violation of ethical standards of such a nature as to render such individual unfit to practice;
- 119 (c) Fraud or misrepresentation in obtaining a license, or
- 120 (d) Other just and sufficient cause that renders a person unfit to practice.

121 (2) Independent lactation consultant (ILC).

122 The board shall issue an ILC license to an individual who successfully passes an examination
123 approved by the board and meets such qualifications as promulgated by the board, including at least
124 the following qualifications:

- 125 (a) A baccalaureate degree, or higher, from a board-recognized college or university whose
126 curriculum included appropriate clinical education, plus 2,500 hours of supervised practice;
- 127 (b) An associate's degree or nursing diploma from a board-recognized program, plus 4000
128 hours of supervised experience;

(c) At least three years full-time, or equivalent part-time, experience as a supervised lactation consultant as defined in section 196, or

(d) Possess significantly more academic education, a significantly-related academic specialty, or substantially more experience. (Such qualifications will be specified in the board's regulations or approved by a two-thirds majority vote.)

3) Peer Counselor (PC).

The board shall issue a PC license to an individual who meets such qualifications as promulgated by the board, including at least all the following qualifications:

(a) 18 years of age;

(b) Satisfactory completion of high school, or an equivalent educational program; and

(c) A recommendation for licensure by an ILC- or LC-level licensee.

(4) Additional license types.

To recognize evolving educational standards, or the emergence of sub-specialties, the board may establish additional licensure types at its discretion.

(5) Volunteers.

Individuals who are members of board-recognized volunteer organizations shall be exempt from licensure requirements if:

(a) They do not hold themselves out as being licensed.

(b) Their volunteer service is performed without fee or other form of compensation, monetary or otherwise, from the individuals or groups served.

(c) The individual volunteer receives no form of compensation, monetary or otherwise, except for administrative expenses such as mileage.

Section 200. Waiver of Requirements.

152 The board may promulgate regulations providing procedures for full or partial waiver of the
153 requirements under Section 199 for applicants who hold a valid license or its equivalent issued by
154 another jurisdiction.

155 Section 201. Licensure Renewal.

156 (1) Licenses issued under this Act shall expire every two years on the anniversary of the birth date of
157 the licensee. Initial licenses shall be issued for a period of time of from one to two years, so as to
158 establish a birthday renewal cycle.

159 (2) Persons licensed under this Act shall be issued a renewal license only upon:

160 (a) Completion of application for renewal in the manner prescribed by the board;

161 (b) Payment of an appropriate fee; and

162 (c) Satisfactory completion of board-required continuing education.

163 (3) The board may require other such evidence of competency as it shall deem reasonably appropriate
164 as a prerequisite to the renewal of any license provided for in this Act, so long as such requirements
165 are uniform as to application, are reasonably related to the measurement of qualification, performance,
166 or competence, and are desirable and necessary for the protection of the public health.

167 Section 202. Scope of practice.

168 All clinical lactation care and services shall ultimately be conducted under the auspices of an ILC.

169 (1) Peer counselors shall be supervised by an ILC. Solo consultation by a PC is authorized; however,
170 the PC shall at all times have a designated supervisor. In case of emergency situations, the supervisor
171 must be readily available by telephone or other electronic means. For ongoing supervision, the
172 supervisor must be available for face-to-face supervision, or the electronic equivalent thereof.

173 Section 203. Disciplinary Requirements.

174 Complaints alleging any violation of this chapter or board regulation may be initiated by any person or
175 by the board. The board shall investigate all complaints relating to proper practice of and alleging any
176 violation of this chapter or any rule or regulation of said board. The board may discipline the licensee
177 if such a licensee has:

- 178 (1) engaged in conduct which places into question the holder's competence to practice the profession
179 including, but not limited to, gross misconduct or misconduct in the practice of the profession;
- 180 (2) committed fraud or misrepresentation in obtaining a license;
- 181 (3) practiced the profession while the ability to practice has been impaired by alcohol, drugs, physical
182 disability, or mental instability;
- 183 (4) violated any law, rule, or regulation of the board;
- 184 (5) been convicted of a criminal offense which reasonably calls into question the holder's ability to
185 practice the profession;
- 186 (6) engaged in dishonesty, fraud, or deceit which is reasonably related to the practice of the
187 profession;
- 188 (7) knowingly permitted, aided, or abetted an unlicensed person to perform activities requiring a
189 license, registration, or authority;
- 190 (8) had a license, certificate, registration, or authority issued by another state or territory of the United
191 States, the District of Columbia, or foreign state or nation with authority to issue such a license,
192 certificate, registration, or authority revoked, canceled, or suspended, not renewed or otherwise
193 acted against, or the licensee has been disciplined, if the basis for the action would constitute a
194 basis for disciplinary action in the commonwealth;
- 195 (9) violated any ethical standard which the board determines to be of such a nature as to render such
196 person unfit to practice as a lactation consultant, such as:

197 (a) inappropriate conduct or touching in the practice of lactation care and services;

198 (b) negligence in the course of professional practice.

199 The board may, by a majority vote, after a hearing held subject to chapter 30A, impose sanctions on a
200 licensed individual. The board may undertake the following actions:

201 (1) suspend, revoke, cancel, or place on probation such license, certificate, registration, or authority;

202 (2) reprimand or censure a licensee;

203 (3) assess upon such licensee an administrative penalty not to exceed \$5,000 for each violation;

204 (4) require such a licensee to perform, for each violation, up to one hundred hours of public service in
205 a manner and time to be determined by the board;

206 (5) require such licensee to complete additional education and training as a condition of retention or
207 future consideration or reinstatement of said license;

208 (6) require such licensee to practice under appropriate supervision for a period of time as determined
209 by the board as a condition of retention or future consideration of reinstatement of such license;

210 (7) require such licensee to participate in medical treatment, mental health treatment, a substance
211 abuse program, or to undergo drug testing, or a combination thereof, as a condition of retention or
212 future consideration of reinstatement of said license, and

213 (8) require restitution where appropriate.

214 The board may, by emergency action summarily suspend or refuse to renew the license of any
215 licensee, whose continued practice poses an immediate threat to the public health, safety or welfare,
216 pending a hearing on the merits of the allegation against the licensee, provided that the board shall
217 hold a hearing pursuant to chapter 30A on the necessity for the emergency action within 10 days of the
218 action. The board shall issue to the licensee a written summary suspension or refusal to renew which
219 specifies the findings of the board and the reasons for its action and which includes notice of the date,

220 time and place of the aforementioned 10-day hearing. At the request of the licensee, the board may
221 reschedule this hearing to a date and time mutually agreeable to the board and licensee. Any such
222 rescheduling of the hearing granted at the licensee's request shall not operate to lift or stay the
223 summary suspension order. If such hearing is not held within 10 days of the board's emergency action
224 or at such time as mutually agreed by the board and licensee, the license, against whom summary
225 action was taken shall be deemed reinstated. At the hearing on the necessity for summary suspension
226 or refusal to renew, the board shall receive evidence limited to determining whether the summary
227 suspension order shall continue in effect pending the final disposition of the complaint. Following
228 such hearing, any continuing suspension imposed by a board shall remain in effect until the conclusion
229 of any formal proceeding on the merits of the allegations against the holder, including judicial review
230 thereof or withdrawn by such board. The board shall develop rules and regulations governing the
231 emergency summary suspension procedure authorized by this section.

232 Nothing in this section shall be deemed a limitation on the board's authority to impose such sanctions
233 by consent agreement as are deemed reasonable and appropriate by the board. Any person aggrieved
234 by any disciplinary action taken by the board may, pursuant to section fourteen of chapter 30A, file a
235 petition for judicial review of such disciplinary action with the superior court. The superior court shall
236 have exclusive jurisdiction over all such petitions, and any such petition shall be limited to a review of
237 the administrative record before the board.

238 Section 203. Unlicensed Practice.

239 The board may assess and collect an administrative penalty up to \$5,000 for each violation, per
240 occurrence, upon persons who practice clinical lactation care and services at a time when their license
241 to practice is not valid because it has been suspended, revoked, or canceled under authority of this
242 chapter, and upon any persons who knowingly practice lactation consultation at a time when their has

243 expired. The board may make application to the appropriate court for an order enjoining unlicensed
244 practice and obtaining a restraining order or other order as may be appropriate.

245 Except as otherwise permitted by law, the board, after a hearing held pursuant to chapter 30A, may
246 assess and collect an administrative penalty of up to \$5,000 for each violation, per occurrence, upon
247 any person who, without holding the required license engages in the clinical practice of lactation care
248 and services. The provisions of this section shall not affect, but shall be in addition to, any other
249 penalty or remedy provided by law. The board may make application to the appropriate court for an
250 order enjoining unlicensed practice, or ordering payment of any assessed administrative penalty, or
251 both.

252 SECTION 4. Severability.

253 The provisions of this Act are severable. If any part of this shall be declared invalid or
254 unconstitutional, such declaration shall not affect the parts which remain.